

**Richard Scheer
Law & Government Affairs
1996 Accomplishments**

Developed professionally to become an effective regulatory advocate and subject matter expert in connection with numbering and other local competition issues, while demonstrating commitment, dedication and work ethic. Advanced from unknown status to gain respect and establish rapport with Commission staff members, coalition allies, and even adversaries. Specific areas of responsibility follow.

Permanent Local Number Portability (LNP)

Served effectively as co-chair of California LNP Task Force, a position demanding impartial administrative ability as well as partisan advocacy skills. Established subcommittees to advance work of LNP Implementation. Frequently led group discussions around contentious issues. Developed working relationships with, and gained respect of, numerous industry representatives.

Developed data requests served by California Telecommunications Coalition on Pacific Bell (PB) in connection with PB assertions about relative cost of AT&T's Location Routing Number (LRN) and PB's Query on Release (QoR) permanent LNP proposals. Responses were used to inform regulators of unsubstantiated basis for inflated cost claims about LRN and illusory savings in QoR. Also prepared AT&T responses to PB data requests regarding AT&T FCC filings.

Prepared comprehensive comments, jointly filed by AT&T & MCI, evaluating the submissions of PB and GTE on relative costs and proposed deployment schedules for LRN and QoR. Worked closely with LNP Project Management, HQ Law & Public Policy and others to identify errors, inconsistencies and shortcomings of incumbent LEC positions. Strength of mid-year filing evident in that MCI, close to year's end, submitted same filing to FCC, to refute PB's Petition for Reconsideration of FCC rejection of QoR.

Advocated need for CPUC mandate to reject QoR and require LRN, in ex-parte meetings with all CPUC Commissioners. Received HQ recognition for playing key role in regional and HQ efforts to obtain regulatory mandate for rapid deployment of competitively neutral LNP solution. Victory achieved with FCC order rejecting QoR and establishing aggressive deployment schedule, and subsequent CPUC order for Task Force to implement LRN in accordance with FCC schedule.

Advocated need for entity to select Service Management System/Number Portability Administration Center (SMS/NPAC) vendor for LNP, leading to CPUC order to form an entity and select an SMS/NPAC vendor by end of 1996. Named by industry peers to be Chair of West Coast Portability Services, LLC, a limited liability corporation. Proposed WCPS name and devised its logo; more significantly, led group through difficult sessions on LLC operating agreement. WCPS is the largest (by number of member companies) such entity in the nation, has met its year-end '96 target of selecting vendors for further negotiations, and is likely to expand to include Hawaii and Nevada.

Interim Number Portability

Represented AT&T in CPUC workshop on interim number portability (INP) based on direct inward dialing (DID) functionality, working closely with HQ (P. Pfautz). Participation helped establish credentials and identify technical feasibility of DID-based route indexing INP, useful in later arbitration cases.

TAB N-46

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

MCI Telecommunications Corporation (U 5001 C)

Complainant,

vs.

Pacific Bell (U 1001 C) and
Pacific Bell Communications,

Defendants.

COMPLAINT

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December 11, 1996

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FILE COPY

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COMPLAINT

In accordance with Rule 9(a) of the Commission's rules of Practice and Procedure and Sections 1702 and 1701 of the California Public Utilities Code ("PU Code"), MCI Telecommunications Corporation ("MCI") respectfully complains against Pacific Bell ("PacBell") for continuing violations of provisions of the PU Code, the Telecommunications Act of 1996 ("Act"), and sections of Title 47 of the Code of Federal Regulations ("C.F.R.") that implement the Act.¹

MCI files this complaint because PacBell's pattern of illegal conduct has effectively stalled MCI's efforts to enter the local exchange market. PacBell's discriminatory and anticompetitive conduct creates the risk of customer dissatisfaction with MCI, a risk that MCI is powerless to mitigate because PacBell controls dial tone and access to customer service and billing

¹ Amendments to the C.F.R. were adopted by the Federal Communications Commission in its First Report and Order, released August 8, 1996, in First Report and Order in the consolidated matters of "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98)" and "Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185)"

records. Because PacBell has allowed a significant backlog of orders to accumulate (over 500 orders have been awaiting processing for at least eight weeks), MCI can not guarantee its new customers that they will in fact be migrated to MCI within a reasonable time after placing the order. Thus, MCI's entry into the local market, and particularly the business market with its higher per-account number of lines and features, is being constrained by PacBell's failure to migrate customers to MCI on a timely basis and without service interruption. This situation is extremely anticompetitive, and becomes more untenable each day as other competitive local carriers announce their plans to enter the local market. Moreover, Pacific's conduct is a major disservice to MCI customers, who demand and have grown to expect a high quality of service from MCI. MCI must provide the same caliber of service for local service that its customers have enjoyed from MCI's long distance service, yet PacBell's actions have thwarted customer expectations and harmed MCI's reputation. For this reason, MCI files this complaint and seeks the Commission's expeditious review and grant of injunctive and other relief.

BACKGROUND

On September 17, 1996, MCI entered the local exchange market in California as a reseller of local exchange services originated by PacBell. Through the acts of its employees and agents, PacBell has engaged in, and continues to engage in, a pattern of conduct that undermines MCI's ability to successfully compete in the local exchange market. PacBell has failed to provide MCI with an on-line service ordering interface, despite this Commission's order. PacBell has agreed to design and implement an electronic data interface with AT&T Communications of California, Inc. ("AT&T") but recently refused to negotiate the terms of electronic interconnection directly with MCI. Moreover, PacBell has disconnected MCI customers without cause, verbally

harassed MCI customers and employees, and has misrepresented the nature of MCI's service to the public. PacBell has denied, and continues to deny, MCI the effective access to customer information and services needed to efficiently migrate customers from MCI to PacBell without any service interruption, and has failed to process customer migration orders within a reasonable time. As a result of PacBell's actions, MCI is unable to offer and provide customers local exchange service that meets reasonable customer expectations. Because PacBell is the provider of dial tone and the ordering support services needed to migrate customer service and billing records from PacBell to any other telecommunications provider, PacBell's conduct will eviscerate any significant competition to serve its local exchange market. The potential for error, disconnection, and delay would be greatly reduced if MCI had an on-line operational support system² or electronic data interface ("EDI") with PacBell.

In June of 1996, MCI requested that EDI be included in negotiations to establish an interconnection agreement with PacBell pursuant to sections 251 and 252 of the Act. After weeks of informal discussions, the parties failed to reach agreement on the technical standards and other issues necessary to EDI. In its "Petition of MCI for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996" ("Petition") filed on August 30, 1996, MCI listed operational support systems as one of the issues for arbitration. (Petition, A.96-08-068, Ex. 3.) In September, PacBell indicated it would not resolve business process issues with MCI on reasonable terms. At the arbitration hearing held pursuant to Section 252, PacBell successfully excluded the issue of EDI from the proceeding.

² A local exchange company's operational support systems include the following functions which are necessary to provide service to customers: preordering, ordering, provisioning, maintenance and repair, and billing.

MCI sought the assistance of PacBell's chief executive in addressing and resolving the anticompetitive behavior of PacBell's agents and PacBell's discriminatory practices. (See Attachment 1, November 11, 1996 letter of Nate Davis, Senior Vice President, MCI, to David Dorman, Chairman, PacBell, and incorporated herein.) PacBell has not provided any written response to MCI's letter. On November 25, 1996, Mr. Davis contacted Mr. Dorman by telephone to discuss PacBell's continuing failure to rectify the problems identified in his letter. Mr. Dorman indicated that he understood the issues with which MCI is concerned, but made no commitment to resolve any of the outstanding issues.

On or about November 18, 1996, MCI became aware that PacBell and AT&T were discussing the deployment of an EDI or "electronic bonding" for AT&T's resale of PacBell local service. On November 21, 1996, MCI's vice president of Local Markets, Michael Beach, wrote a letter to the president of PacBell's Industry Markets Group, Liz Fetter, and requested that MCI be immediately included in the ongoing EDI discussions between PacBell and AT&T. On December 4, 1996, Lee Bauman, PacBell's Vice President for Local Competition replied by letter that, while PacBell agreed that MCI's participation with AT&T in the definition of requirements for long term systems interface solutions may be valuable, "we do not believe that the decision as to who participates is ours to make." Mr. Bauman further stated, "Some other CLECs have asked to be included in the definition of (specifications for operations support systems). Pacific encourages AT&T to include the needs of all other CLECs in its statement of requirements."

Mr. Bauman stated, "The information on specifications and requirements from AT&T that we have to date is included in the arbitrated agreement between AT&T and Pacific Bell." This suggests that PacBell will design its electronic interface based upon AT&T's system.

requirements, and that MCI's needs will not be considered. The attachment to Mr. Bauman's letter listed "standard interconnection and unbundled network elements"; and made lengthy assertions about the recovery of PacBell's development costs.

None of the items listed relate to electronic bonding. PacBell opted to discuss the issue of cost recovery for developing unbundled network elements, rather than to respond to MCI's request for specifications that would enable MCI to begin the process of electronic bonding. Mr. Bauman stated that PacBell will respond to requests for unbundled network elements on a first-come-first-serve basis. MCI has demanded an electronic interface with PacBell since June of 1990. According to Mr. Bauman's letter, MCI must now wait until PacBell has finished designing an interface with AT&T before PacBell will discuss the interface directly with MCI, and until then, PacBell will discuss specifications with MCI only if AT&T serves as a conduit.

This statement effectively denies MCI's request to negotiate directly with PacBell over the terms of electronic bonding that PacBell is required to provide to MCI on a nondiscriminatory basis. If PacBell provides EDI to one carrier, it must provide it equally to all carriers.

Local competition will never materialize if PacBell is permitted to continue its anticompetitive and discriminatory acts against MCI. In view of the ongoing nature of PacBell's violations, the injury to MCI's reputation and competitiveness, and the critical importance of resolving these issues quickly to safeguard the growth of competitive alternatives for local telephone service, MCI respectfully requests the Commission to set its Complaint for hearing on expedited basis and to grant MCI the injunctive relief prayed for below.

In support of its Complaint, MCI respectfully shows as follows:

DESCRIPTION OF THE PARTIES

MCI, the complainant herein, is a corporation organized and existing under the laws of the State of Delaware, and is authorized by this Commission to provide interLATA, intraLATA, and local exchange telecommunications services throughout the State of California. MCI has its principal local offices at 201 Spear Street, Ninth Floor, San Francisco, California 94105, telephone (415) 978-1880. Through its subsidiary MCI Metro Access Transmission Services, Inc., MCI was authorized by Commission Decision ("D.") 96-02-072 to resell intraLATA toll and local exchange service throughout the State of California, effective March 1, 1996.

PacBell, the defendant herein, is a corporation organized and existing under the laws of the State of California, and is the largest local exchange carrier ("LEC") authorized by this Commission to provide local exchange telecommunication services within the boundaries of its extensive service area in the State of California. PacBell has its offices at 140 New Montgomery Street, San Francisco, California 94105, telephone (415) 542-9000.

FACTS

1. Section 709 of the Public Utilities Code ("PU Code") embodies the Legislature's policies for telecommunications in California, including the promotion of lower prices, broader consumer choice, and the avoidance of anticompetitive conduct. The Legislature seeks to remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice. Section 709.5, subsection (a) sets forth the Legislature's intent that all telecommunications markets subject to this Commission's jurisdiction should be opened to competition by January 1, 1997.

2. The Commission has recognized that the provision of local exchange service by non-facilities based competitive local carriers ("CLCs") through resale is a primary means of creating a competitive local exchange market³. Entry into the local exchange service market by CLC resellers was authorized to begin on March 1, 1996. MCI's local exchange resale tariff was filed with this Commission on August 8, 1996, and became effective on September 17, 1996. MCI purchases bundled local exchange service from PacBell's tariff SCHEDULE CAL.P.U.C. NO. 175-T, Section 18, SERVICES FOR RESALE.

3. On September 17, 1996, MCI began accepting customer orders for MCI's provision of local exchange service. The acts alleged herein have all occurred on or after September 17, 1996, unless specifically stated otherwise.

4. MCI initially offered local exchange service to residential and business customers having 20 lines or less and whose bills are less than \$5,000 per month; this customer sector is known as "mass market". MCI's resale of PacBell's local exchange services to its mass markets customers entails a substitution of MCI for PacBell as the carrier that markets, sells, provisions, supports, and bills local exchange service to the consumer. This substitution of carrier involves a transfer of the recordkeeping and billing function from PacBell to MCI ("customer migration"). No physical modification of the customer's connection to or within PacBell's serving central office is required by this substitution of the billing entity, except in the case where new lines are ordered or unless specifically requested by the customer and ordered by MCI. By prior arrangement with PacBell, MCI's order entry center transmits customer orders to PacBell's local interconnect service.

³ R.95-04-043/L.95-04-044, Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service and companion Order Instituting Investigation, "Local Competition Proceeding".

center ("LISC"). Upon receipt of the order, the LISC is to confirm receipt of the order and notify MCI's order center of any defects so that necessary corrections can be made.

5. At all times relevant to the matters alleged herein, PacBell was an incumbent local exchange carrier ("ILEC") that owned, maintained, and controlled the central office and local loop equipment that provide dial tone and local exchange service to the mass markets customers mentioned herein. MCI had no physical control over those facilities.

6. At all relevant times, PacBell owned, maintained, and controlled an electronic data entry system by which the types of local exchange service, service arrangements, and billing are ordered for each customer. MCI has no access to this electronic data system.

7. PacBell will not implement an EDI with MCI on a timely basis that would have eliminated many of the service order problems that give rise to this complaint.⁴ In June of 1996, MCI expressly sought an on-line service order interface with PacBell in its request for services pursuant to Section 251 and renewed its request in its petition for compulsory arbitration under Section 252 of the Act⁵. MCI asserted that, "The incumbent LEC must make available to MCI industry standard electronic interface systems sufficient to order interconnection trunks, unbundled network elements, resale, and other ILEC services as efficiently as the ILEC provides itself."⁶ A

⁴ The EDI is the conduit for the flow of information between the operations support system and customer service database maintained by PacBell and the counterpart maintained by the CLC. It enables entries in the database of one user to automatically update the database of the other user. Thus, use of EDI would reduce the potential for human error and provide both carriers with current and consistent information.

⁵ Section 252 Subsec. (c) (1) imposes upon PacBell the duty to negotiate in good faith the terms and condition of agreements to fulfill its duties to resell its telecommunications services and to provide nondiscriminatory access to network elements. The FCC has subsequently defined network elements to include operation support systems, that is the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. (47 C.F.R. Sec. 51.319 subsec.(f).)

⁶ Exhibit 3 to the Petition, Issues Proposed for Arbitration.

summary of MCI's position regarding service order support systems, including EDI, (originally Exhibit 3 to the Petition) is provided as Attachment 2 to this Complaint. Attachment 2 is particularly useful because the portions of the Act and the FCC's First Report and Order relied upon MCI are cited. Pacific successfully excluded the issuance of electronic bonding with MCI from the arbitration.

8. MCI is informed and believes that the agreement arbitrated by PacBell and AT&T pursuant to Section 252 of the Act obligates PacBell to provide to AT&T an electronic interface for transferring and receiving local service orders, firm order confirmations ("FOCs"), service completions, and other provisioning data.⁷ PacBell is further obligated to provide the electronic interface "for all ordering order flows (sic) at parity with that Pacific provides to itself or affiliates."⁸ When ordering a local service network element, an AT&T's representative is granted *real-time access to PacBell's customer information systems*, which will allow the AT&T representatives to, among other things, obtain the customer profile, *enter the order for the customer's desired features and services*, and provide service availability dates, including dispatch installation/dispatch schedules. Using this access, *AT&T representatives may also suspend, terminate, or restore service where technically feasible.*⁹ Pacific and AT&T have agreed to use standard industry order formats which already exist; as to those which are needed but do not exist, PacBell and AT&T will mutually agree to a format to be used to address the specific data

⁷ AT&T Agreement, Attachment [11], paragraph [V][A].

⁸ Agreement between AT&T Communications California, Inc., and Pacific Bell, (AT&T Agreement) Attachment 11, paragraph [II] (D). The Agreement lists Pacific's service ordering systems to which access is provided and includes BOSS and SORD. These two database systems contain on-line customer information, and are the mechanisms used to provision, change, and disconnect end user services.

⁹ AT&T Agreement, Attachment 11, paragraph [V] (B).

requirements necessary for the ordering of those network elements or combinations.¹⁰ The relevant portions of the AT&T Agreement are provided as Attachment 3 to this Complaint.

9. MCI is further informed and believes that at this time, AT&T has received several thousand migration orders, which are from its own employees; that PacBell is aware that MCI is marketing its local service to the public and has submitted many more end user migration orders to PacBell than AT&T; that PacBell has not offered MCI access to its operation support systems via electronic data interconnection under the same terms it has provided to AT&T; that through Mr. Bauman's statements, PacBell has told MCI that it will not address electronic bonding with MCI until it has finished development of EDI to AT&T's specifications, and that MCI must work through AT&T, rather than directly with PacBell, effectively refused MCI's request to participate in the development and monitoring of its EDI standard; and that EDI would not be available for MCI until June, 1997, at the earliest.

10. On November 25, Mr. Davis, Senior Vice President of MCI, contacted Mr. Dorman, President of PacBell, by telephone to discuss his concerns that PacBell was proceeding to implement EDI with AT&T, even though AT&T was not yet reselling local exchange service and MCI's experience with resale demonstrated the need for an on-line data interface between MCI and PacBell. Mr. Davis was particularly concerned by Pacific's failure to respond because MCI intended to begin submitting orders for business market resale on November 26. During his telephone conversation with Mr. Davis on November 25, 1996, Mr. Dorman implied that AT&T had a superior right to EDI because it had requested EDI before MCI and that PacBell's ability to develop EDI concurrently with MCI is limited by "capacity."

¹⁰ AT&T Agreement, Attachment 11, paragraph [VII] (B).

11. As more fully described below, the migration of local exchange customers from PacBell to MCI has been blocked, delayed, and mishandled as a result of inefficiencies inherent in the current mode of information exchange between PacBell and MCI. Loss of the customer's dial tone and service features routinely occur under the present system. PacBell's LISC staff has advised MCI's order processing staff that significantly fewer of these problems would occur if customer migration were accomplished through an on-line EDI. MCI seeks the same on-line access to automated order entry as PacBell has agreed to provide AT&T to eliminate the anticompetitive disadvantage it faces from having to use the current inefficient and error-prone manual order processing system.

12. PacBell has subjected customers who chose MCI as their local exchange carrier to involuntary loss of dial tone, loss of service features, unauthorized re-routing of calls, and unreasonable service interruptions. At least 20 customers for whom MCI migration orders were submitted lost dial tone even though there was no request to disconnect their service and no notice of impending disconnection was given. MCI's customers continue to lose dial tone when they migrate from PacBell to MCI local service. Most recently, loss of dial tone occurred on or about November 4, 5 and 7, and again on December 2, 1996, despite PacBell's dedication of a team of employees to MCI's resale account on or about October 14, 1996, in an attempt to improve the quality of service provided to MCI.

13. In one case, when the customer called PacBell to complain of the service disconnection, the PacBell employee incorrectly stated to the customer that MCI had requested the disconnection. In another case, PacBell degraded the phone service of a customer who selected MCI as its local exchange carrier by routing calls intended for that customer's business to a

neighboring business. PacBell has also denied service features, such as Call Waiting®, even though those services had been expressly ordered by MCI, when migrating customers to MCI. Over 30 such cases occurred during the week of November 18, 1996. On two occasions, PacBell shut down its wire centers for scheduled maintenance without providing notice to MCI. In one case, PacBell rejected all migration orders for customers served by the wire center, rather than holding and then processing migration orders after the wire center resumed operation. In both cases, PacBell failed to notify MCI that the processing of MCI customer migration orders would be delayed. This practice harms MCI's ability to provide timely and effective service to its customers.

14. PacBell has intimidated, harassed, and misinformed customers who indicated to PacBell representatives that they were interested in migrating to MCI local service. Agents or employees of PacBell have stated to prospective MCI customers that MCI lacks authority to provide local service in California; that the Commission, by order, has prohibited migration to MCI until January 1, 1997; that MCI is lying and stealing customers; that MCI's local customers must nonetheless continue to pay PacBell for local service because PacBell, and not MCI, owned the facilities; that MCI local service won't be as reliable as PacBell service; and that if a customer subscribes to MCI for local exchange service, then he must subscribe also to MCI long distance service. The final bill generated by PacBell for a customer migrating to MCI states, "You have been disconnected from MCI long distance." This is confusing to the customer and creates the impression that no long distance calls can be made as a result of switching to MCI local service.

15. PacBell has provided incorrect information about service availability to MCI employees engaged in selling MCI's local service. In one case, the PacBell agent stated that MCI could not resell a feature known as "remote access to call forwarding." In fact, this feature is

available to resellers under PacBell's tariff 175-T, Access Service, Section 18.5.1, Customer Calling Services - Resale.

16. PacBell has overtly discriminated against MCI customers. An agent of PacBell told an MCI local customer that the individual was not a subscriber to MCI local service and that if he attempted to switch to MCI, his dial tone would be shut off. In yet another case, an MCI customer complained to an agent of PacBell that he wanted multiple line hunting to be in place sooner than the 48 hour period he had been told was required. The PacBell representative advised MCI's customer that if he returned to PacBell, the desired service feature would be on-line within 24 hours.

17. PacBell provides MCI customers with inferior service, even though it has not specified that resold exchange services will be of any different quality in its Services for Resale tariff. MCI is informed and believes that PacBell provides reliable local exchange service to its customers so that a PacBell customer does not lose dial tone after requesting a change in billing arrangements.

18. PacBell has migrated at least six customers who had selected MCI as their local service provider to other telecommunications carriers, such as AT&T and Genesis.

19. PacBell has systematically frustrated MCI's attempts to serve customers who have chosen MCI local service by failing to process migration orders within a reasonable period of time. Since MCI began submitting orders for the resale of local exchange service to PacBell on September 18, 1996, PacBell has not responded to those orders on a timely basis. By responding to an order, PacBell acknowledges receipt of MCI's order and either provides a date on which the customer will be switched (confirms) or notes deficiencies for correction (rejects). The response is

crucial because only after PacBell has confirmed the order can MCI advise its customer when MCI service will begin. An order is completed after changes to PacBell's billing system have been made to show that MCI is the customer's provider of local service. Upon order completion, PacBell is to provide MCI with the date of order completion and a list of features provided the customer. Notification of completion, not only the change in PacBell's billing records, is required so that MCI may timely begin billing and collecting for services which it is being charged by PacBell. Unless an order has been noted as "complete", there is no way of determining whether the customer has been migrated, PacBell has received the order and has yet to process it, or has lost the order.

20. PacBell has failed to provide migration and billing service to MCI that is either reasonable or equal in quality to that it provides to its end users. On or about September 9, 1996, MCI and PacBell held discussions to establish their resale order processing procedure. MCI projected the average daily number of resale orders it would be sending to PacBell. PacBell vowed to provide firm order commitment ("FOC")¹¹ within 4 hours of receipt of each order, to migrate the customer within 3 days of issuance of the FOC, and to establish dial tone for new services within 5 days. PacBell has never met any of these commitments. Three weeks after MCI entered the local market (October 10, 1996), notices of completion were outstanding on 38% of the orders MCI had submitted to PacBell. Of the orders MCI transmitted from September 18 through November 14, notices of completion are outstanding for 2,119 orders. As of December 11, 1996, these orders were 4 to 12 weeks old. Of that number, 510 orders were 8 to 12 weeks old.

¹¹ "Firm order commitment" consists of providing the date and time at which the migration of the customer to MCI local service will be complete, such that the customer will be billed subsequently for MCI service.

21. MCI has responded with every means at its disposal to PacBell's requests for assistance in identifying and resolving uncompleted orders. MCI's actions are detailed in the affidavit of Paul Barrett, Director of Mass Markets Local Operations for MCI, Attachment 5, which is incorporated herein by this reference.

22. There is no PacBell tariff that requires PacBell to migrate a customer to another telecommunications carrier within a specific period of time after receipt of a migration order. The most analogous situation would be supersedure or a change in billing, a process governed by PacBell Rule 2.1.23 which requires:

"The outgoing customer shall be notified of the effective date of supersedure or change in billing . . .

"Within two working days after the taking of a completed order the Utility will mail a confirmation letter to the incoming customer setting forth a brief description of the services and the specific . . . rates . . . and contractual obligation . . . applicable to the services currently being billed."¹²

23. The confirmation letter described in Rule 2.1.23 sets forth the services and rates being applied to the incoming customer and thus indicates that migration has been completed. A reasonable application of this tariff rule to the resale situation would require PacBell to complete migration of the customer to MCI within 2 working days after issuance of the FOC.

24. PacBell's consistent failure to provide MCI with reasonable migration service has harmed MCI's relationships with its customers and further exacerbated the workload at MCI and PacBell's order processing center and LISC, respectively. MCI customers contact MCI's local service order center because they are dissatisfied with the delay in receiving dial tone for new

¹² PacBell SCHEDULE CAL.P.U.C. NO. A2., sheets 124 and 124.1.

services, have lost previously confirmed custom features during the migration, or have lost dial tone. Problems such as these are escalated directly to the PacBell LISC. About 50 to 100 such complaints are escalated each day. Escalated orders receive priority treatment; however, this diversion of LISC and MCI resources compounds the delay in processing all the pending orders.

25. On at least one occasion, PacBell provided a FOC but delayed the migration date by 5 days with no notice to MCI or MCI's customer. PacBell's service order system apparently schedules, and then automatically changes, customer changeover times based upon competing workload on the system. The practice of keeping MCI and its customers ignorant of the status of dial tone service fatally harms MCI's relationship with the customer and prejudices MCI's competitiveness. In one particular case, a PacBell customer had been migrated to MCI. While receiving resold local exchange service, the customer lost dial tone. The customer then contacted MCI and terminated MCI local service, saying that the loss of dial tone was unacceptable.

26. MCI has used all reasonable means to correct any problems its customers may have with its resold service. MCI operates a technical network team that accepts and analyzes customer inquiries and complaints. Since PacBell owns and controls the facilities that provide local exchange service, MCI's team generates and forwards trouble reports to PacBell. In turn, PacBell is expected to fix the technical problem and advise MCI of the trouble order's status. However, as of this date, there have been at least eleven occasions on which trouble tickets sent by MCI had been resolved by PacBell to its own satisfaction without advising MCI of the orders' status. This failure to provide reasonable information to MCI impairs MCI's ability to provide effective customer service. Most importantly, PacBell's unreasonable actions undermine MCI's relationships with its customers.

27. Since MCI began submitting orders to migrate PacBell local customers to MCI, PacBell has contrived various means to delay and prevent the migration of customers. PacBell rejected orders on the basis of trivial discrepancies between the information contained on the MCI order and within PacBell's database. Moreover, PacBell insisted that MCI re-submit new orders to correct such discrepancies. Since the orders went to the end of the queue, PacBell arbitrarily denied MCI's customers the timely provision of service on the basis of its unreasonable ordering process. Until the week of November 18, PacBell refused to migrate customers with their existing service arrangements intact, or "as is", but required that an order detailing the customer's service arrangement be submitted by MCI, even if the customer wished to be migrated "as is". This created substantial delay, the potential for error, and customer inconvenience.

28. MCI requires complete, current, and timely information about a prospective customer's existing service configuration to ensure that the resale order includes all the services needed to serve the customer. PacBell provides this information to MCI in the form of a customer service record ("CSR"). The CSR is updated periodically so there is no assurance that it represents the customer's current service arrangement, and is made available to MCI generally between 3 to 21 days, although a delay of 21 days has been experienced. A complete and current listing of a customer's service arrangement is available in the form of Customary Proprietary Network Information ("CPNI"). The CPNI reflects all of the services for which the customer is billed by PacBell, and thus, its accuracy is assured. Another advantage of CPNI is that its information is provided in condensed form, and is provided within 24-48 hours. Based upon information and belief, MCI asserts that PacBell currently provides CPNI information to another provider of telecommunications services, MFS, for its use in migrating customers from PacBell to MFS. MCI

has requested customer records in CPNI format. PacBell appears to be receptive to MCI's request but has not delivered customer information to MCI in CPNI form.

29. PacBell has unreasonably withheld customer service information from MCI. PacBell has required the submission of a prospective customer's written "letter of authorization" to PacBell before it will provide MCI with the customer's CSR. This practice handicaps MCI's ability to discuss the customers' service needs and to suggest potential service improvements. It is totally unsupported by statute. Section 2891 of the PU Code prohibits telephone corporations from disclosing, without first obtaining the subscriber's written consent, a residential subscriber's calling patterns or the services which the residential subscriber purchases from the corporation, among other things. However, subsection (d) makes this section inapplicable to "information transmitted between telephone or telegraph corporations pursuant to the furnishing of telephone service between or within service areas."¹³ Moreover, this section addresses the availability of on residential customer records; PacBell is requiring written letters of authorization with respect to prospective business and commercial customers.

30. MCI was forced to suspend marketing its local exchange service to residential customers for three weeks in the hopes that the order backlog would be eliminated during that time. MCI could not continue to promote its local exchange service because PacBell's unreasonable delay in order processing prevented MCI from offering residential customers timely, quality service to which they are entitled. As a result, MCI believes that it has been forced to forego sales in the local market, and that given the imminent entry of other competitors, these losses may be permanent.

¹³ PU Code sec. 2891, subsec. (d) (8).

31. MCI customers who lose dial tone or custom calling features believe MCI is at fault and terminate MCI local service. Customers whose orders have not been completed for several weeks may believe the delay is attributable to MCI and cancel their orders. Other customers whose orders have been lost will never be migrated to MCI, unless the customer contacts MCI to order service. This loss of customers constitutes a significant harm to MCI in terms of both revenue and business reputation.

32. In addition to causing direct harm to MCI and its customers, PacBell's actions are anticompetitive.

ARGUMENT

33. MCI brings this complaint knowing that competition between telecommunication carriers, and not regulatory intervention, is the key to providing more choice, better service, and lower rates for local exchange service to California consumers. However, this Commission is vitally concerned with the realization of these benefits. In D.95-07-054, the Commission adopted initial local competition rules applicable to the service territories of PacBell and GTE California. The Commission adopted the following policy principles and objectives in support of its order¹⁴

- 1.D. It is the policy of the Commission that all telecommunications providers shall be subject to appropriate regulation to safeguard against anti-competitive conduct.
- 1.F. It is the policy of the Commission that networks of dominant providers of local exchange telecommunications services should be unbundled in such a manner that a carrier is provided access to essential facilities on a nondiscriminatory stand alone basis.
- 1.H. It is the policy of the Commission to ensure that local exchange competition does not degrade the reliability of the telecommunications network.

¹⁴ D.95-07-054, Appendix A.

34. The foregoing facts demonstrate that the Commission's goal of a competitive local exchange market is susceptible to sabotage by the anticompetitive practices of incumbent LECs. MCI brings this action against PacBell because it has undermined MCI's ability to compete as a reseller, it has denied MCI access to essential billing and ordering support systems on a nondiscriminatory basis, and it has degraded the reliability of local exchange service which it provides to MCI and MCI's customers. Furthermore, PacBell's acts directly defy the Commission's express policies in favor of local competition.

A. PacBell has Violated D.96-02-072 by Failing to Provide An On-Line Service Ordering Interface to MCI.

35. In D.96-02-072, the Commission acknowledged that "adequate service ordering interfaces are necessary to enable CLCs to offer a quality of service which is competitive with that of the LECs. We shall . . . provide the flexibility for carriers to enter into agreements tailored to their specific needs and consistent with the technical capabilities of the LECs." (mimeo, p. 32.) The Commission then adopted the following rule for intercompany arrangements:

LECs shall put into place an automated on-line service ordering and implementation scheduling system for use by CLCs. Data pertaining to service and facility availability shall be made available to CLCs.

D.96-02-072, Appendix D, Rule 11. The Commission left the technical specifications of the interface to the carriers but indicated its preference for agreements which minimize costs to both parties and minimize any other barriers to entry.

36. Despite MCI's documented requests for electronic bonding and PacBell's own admission that electronic bonding would eliminate the potential for lost dial tone, dropped customer calling services, order delay and loss of orders, PacBell has not begun negotiations with MCI over

the design, specifications, or deployment of an automated on-line service ordering and implementation scheduling system for use by MCI.

37. Pacific's failure to provide MCI an automated on-line service ordering and implementation scheduling system and the resultant barrier to MCI's entry to the local market is documented above. Pacific's failure to act constitutes a violation of Rule 11 of the Final Rules for Local Exchange Service Competition in California.

B. PacBell Has Violated D.96-02-072 by Impairing the Quality of MCI's Customer Service Through Its Control of Operations Support Systems.

38. In D.96-02-072, the Commission unequivocally stated its intent that the quality of customer service offered by CLCs should be unimpaired by the exercise of control over customer information by incumbent LECs. However, PacBell has failed to provide service ordering interfaces adequate to ensure that MCI can offer a quality of service competitive with PacBell. The absence of electronic bonding between MCI and PacBell allows for PacBell to rationalize its failure to process MCI's orders in the same businesslike manner it would process its own customers and has frustrated MCI's attempts to mitigate the situation.

39. PacBell's actions make it impossible for MCI to (a) guarantee that its customers will receive dial tone, (b) assure that current service will continue without interruption, (c) apprise customers of the status of requested repairs, (d) commence billing under MCI's tariffed rates within a reasonable time, and (e) provide a date certain for cutover to MCI service. Because this discriminatory treatment makes it impossible for MCI to offer its resale customers a quality of service competitive with that of PacBell, PacBell's acts directly violate D.96-02-072.

C. PacBell has Unlawfully Discriminated Against MCI and its Customers in Violation of PU Code Section 453.

40. PacBell has selectively provided access to an electronic data interface even though its duty to provide all CLCs with electronic bonding under D.96-02-071 is clear. PacBell is undertaking an electronic data interface with AT&T but not with MCI. By enabling AT&T to process customer migration orders more expeditiously, efficiently, and accurately than MCI, PacBell has granted a competitive advantage to AT&T and disadvantaged MCI in the local exchange market. Moreover, by continuing to utilize its own on-line provisioning system to serve customers who elect PacBell local exchange service, PacBell places MCI at a further competitive disadvantage in relation to PacBell. The foregoing actions constitute violations of Section 453, subsection (c) of the PU Code.

41. PacBell has refused to treat MCI's requests for customer service changes under the standard established by its filed end-user tariffs. PacBell has chosen to provide AT&T with on-line, real-time access to customer service order records and to accelerate its development of EDI with AT&T, despite MCI's obvious need for on-line operating support systems and MCI's documented requests for the EDI interface. Moreover, the operating support systems provided to MCI are inferior to those currently being provided to MFS and to PacBell, because they generate less customer information and are slower than the system used to serve those other carriers. This treatment of MCI constitute violations of Section 453, subsections (a) and (c) of the PU Code.

42. The abusive treatment of MCI customers based upon their decision to select an alternate local exchange carrier also constitutes unlawful discrimination. PacBell has granted preferential treatment to customers who retain PacBell local service in violation of Section 453, subsection (a) of the PU Code. It has also subjected consumers who purchase service provided